



3510-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2019-0027]

RIN 0651-AD42

Trademark Fee Adjustment

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to set or adjust certain trademark fees, as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The proposed fees are intended to recover the prospective aggregate costs of future strategic and operational trademark and Trademark Trial and Appeal Board (TTAB or Board) goals (based on workload projections included in the USPTO fiscal year (FY) 2021 Congressional Justification), including associated administrative costs. The proposed fees will further USPTO strategic objectives by: better aligning fees with costs, protecting the integrity of the trademark register, improving the efficiency of agency processes, and ensuring financial sustainability to facilitate effective trademark operations. Before a final rule is issued, the USPTO will consider the state of the U.S. economy, the operational needs of the agency, and public comments submitted pursuant to this

rulemaking. The USPTO will make adjustments as necessary to the substance and timing of any final rule based on all of these considerations.

DATES: Written comments must be received on or before [INSERT DATE 45 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The USPTO prefers that comments be submitted electronically via email to TMFRNotices@uspto.gov. Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Catherine Cain; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia 22314, attention Catherine Cain; or via the Federal eRulemaking Portal. See the Federal eRulemaking Portal website (<https://www.regulations.gov>) for additional instructions on providing comments via the portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2019-0027).

Although comments may be submitted by postal mail, the USPTO prefers to receive comments electronically because the Office may more easily share such comments with the public. The USPTO prefers that comments submitted electronically be in plain text, but they also may be submitted in portable document format (PDF) or a word processing file format (DOC or DOCX). Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into PDF.

The comments will be available for public inspection on the USPTO's website at <http://www.uspto.gov>, on the Federal eRulemaking Portal, and at the Office of the

Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia 22314. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at 571-272-8946, or by email at TMPolicy@uspto.gov.

SUPPLEMENTARY INFORMATION: The USPTO conducted a fee assessment in January 2019 that formed the basis for this regulatory process to propose adjusting and setting new trademark user fees. While trademark-related costs of operations have risen, trademark fees have not changed since January 2017. The revenue and workload assumptions in this notice of proposed rulemaking (NPRM) are based on the assumptions found in the FY 2021 Congressional Justification. However, projections of aggregate revenues and costs are based on point-in-time estimates, and the circumstances surrounding these assumptions can change quickly. Notably, since the FY 2021 Congressional Justification was published, fee collections have been lower than anticipated, in part due to lower than expected application filings as a result of the COVID-19 outbreak.

The USPTO is also mindful of the current difficulties many USPTO users are experiencing as a result of the pandemic. The USPTO has undertaken many efforts to provide various types of relief, including deadline extensions and fee postponements. Ultimately, the goal of the USPTO is to ensure not only that businesses and entrepreneurs can weather this storm, but that they can hit the ground running once it passes.

The USPTO anticipates that the earliest any proposed trademark fee changes could take effect is October 2020. Before a final rule is issued, the USPTO will consider the state of the U.S. economy, the operational needs of the agency, and public comments submitted pursuant to this NPRM. The USPTO will make adjustments as necessary to the substance and timing of any final rule based on all of these considerations.

As part of the multi-year fee-setting process, the Trademark Public Advisory Committee (TPAC) held a public hearing at the USPTO on September 23, 2019. The Office considered and analyzed all comments, advice, and recommendations received from the TPAC before publishing this NPRM. The USPTO is now moving to the next step in the process. This NPRM proposes changes to fees and also proposes new fees in order to solicit public comment.

Purpose: The USPTO protects consumers and provides benefits to businesses by effectively and efficiently carrying out the trademark laws of the United States. As a fee funded agency, appropriate fees are critically important for the USPTO to maintain the quality and timeliness of examination and other services, and to stabilize and modernize aging information technology (IT) infrastructure. The fee schedule proposed in this rulemaking will recover the USPTO's aggregate estimated future costs and ensure the USPTO can achieve strategic and operational goals, such as effectively using resources to maintain low trademark pendency and high quality, fostering business effectiveness (ensuring quality results for employees and managers), stabilizing and modernizing trademark IT systems, continuing programs for stakeholder and public outreach, enhancing operations of the TTAB, and ensuring financial sustainability to facilitate effective trademark operations.

Section 10 of the AIA authorizes the Director of the USPTO (Director) to set or adjust by rule any fee established, authorized, or charged under the Trademark Act of 1946, 15 U.S.C. 1051 et seq., as amended (the Trademark Act or the Act) for any services performed by, or materials furnished by, the Office. *See* section 10 of the AIA, Pub. L. 112-29, 125 Stat. 284, 316-17, as amended by the SUCCESS Act, Pub. L. 115-273, 132 Stat. 4158. Section 10 of the AIA prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs to the USPTO with respect to such trademark and TTAB operations. However, this authority includes the flexibility to set individual fees to advance key policy objectives. Thus, the Director may set individual fees at, below, or above their respective associated costs, while taking into account the aggregate estimated costs to the USPTO.

Section 10 of the AIA also establishes certain procedural requirements for setting or adjusting fee regulations, including public hearings by, and input from, the TPAC. *See* section 10(c) of the AIA, Pub. L. 112-29, 125 Stat. at 317. Accordingly, on August 28, 2019, the Director notified the TPAC of the USPTO's intent to set or adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials, available at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

On September 23, 2019, the TPAC held a public hearing in Alexandria, Virginia. Transcripts of this hearing and comments submitted to the TPAC in writing are available for review at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

The TPAC subsequently released a report (TPAC report), dated October 31, 2019, regarding the preliminary proposed fees. The report recognized that fee adjustments are warranted to achieve strategic and operational goals and evaluated the various proposed fees in view of the USPTO's stated rationales for setting or adjusting fees for certain services and activities, as well as the public comments regarding the fee proposals. The TPAC report expressed support for an increase in fees that would support USPTO operations by recovering costs and maintaining a sufficient operating reserve but raised concerns regarding some of the proposed fee increases and their potential impact on customers. The TPAC report offered recommendations to address these concerns. The report is available at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

After careful consideration of the comments and recommendations provided in the TPAC report and in testimony by users at the public hearing, and keeping in mind the fee setting goals of this proposed rule, the USPTO has made various changes to the initial fee proposal, including the withdrawal of proposed fees for filing a motion for summary judgment and for filing a request for suspension and remand and the proposed increase in the fee for filing an affidavit under section 15 of the Act. Other fees in the preliminary proposal were retained or modified, as reflected in this proposed rule and explained in further detail below. The USPTO seeks comments on the fee proposals, including in relation to the current environment.

The USPTO estimates, based on the assumptions found in the FY 2021 Congressional Justification, that the additional aggregate revenue derived from the proposed fee schedule will recover the future costs of implementing strategic and

operational goals, including the cost of necessary IT stabilization and modernization activities, with the expectation that the proposal will gradually build the operating reserve to achieve sustainable funding that will mitigate the risk of immediate unplanned financial disruptions. Under this proposal, based on the assumptions found in the FY 2021 Congressional Justification, the Office estimates reaching the optimal six-month trademark operating reserve level in FY 2025.

Summary of major provisions: The USPTO proposes to set or adjust trademark fees codified in 37 CFR parts 2 and 7. Fees are proposed to be increased for all application filing types (i.e., paper applications, applications filed via the Trademark Electronic Application System (TEAS), and requests for extension of protection under section 66(a) of the Trademark Act, 15 U.S.C. 1141f). The proposed per-class fee increases range from \$25 for a TEAS Plus application to \$150 for a paper application. Fee increases of \$100 per class are also proposed for filing affidavits or declarations of use or excusable non-use under section 8 or section 71 of the Act (section 8 or section 71 affidavits), 15 U.S.C. 1058, 1141k. As described in further detail below, these proposed increases address policy considerations related to ensuring a more accurate register as well as reflecting increased processing costs to the Office in handling these filings.

This proposed rule creates two levels of fees for petitions, one for petitions to the Director under §§ 2.146 and 2.147 and a lower fee for a petition to revive an abandoned application under § 2.66. Currently, the fees for these petitions are \$200 if filed on paper and \$100 if filed through TEAS. The USPTO proposes to set the fee for petitions under §§ 2.146 and 2.147 at \$350 if filed on paper and \$250 if filed through TEAS. The fees for a petition to revive under § 2.66 are proposed to be set at \$250 if filed on paper and \$150

if filed through TEAS. These proposed fees take into account the different processing costs of these filings.

New fees are proposed for requests for reconsideration under § 2.63(b)(3) that are filed more than three months after the issue date of a final action (at \$500 for paper filing and \$400 for filing through TEAS or the Electronic System for Trademark Trials and Appeals (ESTTA)). Requests for reconsideration are documents filed after a final action that respond to the outstanding refusals or requirements (*see* Trademark Manual of Examining Procedure (TMEP) § 709.05). They include an applicant's request to the TTAB, filed within six months of the issue date of a final action, whether filed with or after a notice of appeal and whether it is denominated as a request for reconsideration or is captioned as something else, such as a request for remand. It does not include any filing with the TTAB after the applicant has filed its appeal brief (*see* Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 1209.04). This new proposed fee, imposed when the filing is more than three months after the issue date of a final action, is designed to encourage applicants to submit these filings earlier in the response period and to recover costs associated with processing all requests for reconsideration.

A new \$50 fee is also proposed for filing a letter of protest, along with new regulations that codify letter-of-protest procedures. The new proposed fee and procedures are designed to help offset processing costs and deter the filing of unsupported or irrelevant letters of protest, while not discouraging the filing of relevant, well-supported letters of protest. The new regulatory section is based on existing, longstanding procedures for letters of protest, which are currently set forth in the TMEP, as well as the procedures set out in the patents rules in 37 CFR 1.290 and 1.291 and the Manual of

Patent Examining Procedure (MPEP) governing third-party submissions concerning pending applications, which serve a function similar to letters of protest.

The Office proposes a new fee structure to encourage registrants to proactively perform sufficient due diligence before filing a section 8 or section 71 affidavit to determine the goods or services for which the registered mark is no longer in use and delete them from the registration. The USPTO herein proposes two fee levels for amendments to registrations to delete goods, services, and/or classes. The USPTO proposes a \$0 fee if the only amendment made in a request under section 7 of the Act (section 7 request), 15 U.S.C. 1057(e), that is filed prior to submission of a section 8 or section 71 affidavit is the deletion of goods, services, and/or classes. As always, no additional fee would be incurred for section 8 or section 71 affidavits that specify fewer than all of the goods or services listed in the registration when the affidavit is filed, which results in the deletion of goods or services not included in the affidavit from the registration. However, if goods, services, and/or classes are deleted in a section 7 request, a response to Office action, or a voluntary amendment after submission and prior to acceptance of a section 8 or section 71 affidavit, the proposed per-class fee of \$250 for submissions filed through TEAS and \$350 for submissions permitted to be filed on paper would be charged. To implement the new fee requirement, corresponding new regulations are also proposed at §§ 2.161(c) and 7.37(c). In addition, the USPTO proposes to revise the section titles and restructure §§ 2.161 and 7.37 to set out the requirements for section 8 and section 71 affidavits more clearly. Except for the new provision regarding the fee required for deletions made after submission and prior to

acceptance of the affidavit, the substantive text of §§ 2.161 and 7.37 has not otherwise been revised.

Finally, as discussed below, 16 fees related to TTAB filings are established or adjusted in this proposed rule: 10 fees would be increased for initiating a proceeding, and six new filing fees would be established. The new and adjusted fees are generally designed to recover more of the costs of TTAB procedures, to reduce the extent to which they are subsidized by trademark fee collections, and to advance policy objectives. The USPTO also proposes to revise § 2.114(a) to provide that a partial refund of the filing fee for a petition to cancel may be made in cases involving only a nonuse or abandonment claim, when default judgment is entered in the case, where there was no appearance by a defendant, and where no filings were made other than the petition to cancel.

Rulemaking goals and strategies: Consistent with federal fee setting standards, the Office conducted a biennial review of fees, costs, and revenues that began in 2019 and found that fee adjustments are necessary to provide the resources needed to improve trademark operations and to implement the USPTO 2018-2022 Strategic Plan (Strategic Plan). As a result, the proposed fee adjustments outlined in this proposed rule directly align with the Office's strategic goals and key objectives as outlined in this section. Consistent with the USPTO's strategic goals and obligations under the AIA, the overall objective of this rulemaking is to ensure the fee schedule generates sufficient revenue to recover the prospective aggregate costs of trademark and TTAB strategic improvements and operations, including the associated administrative costs. Fees must be set at levels projected to cover the cost of future budgetary requirements and maintain an operating reserve at a sufficient level. Trademark applications in FY 2019 represented filings in a

record number of over 673,000 classes of goods/services. However, in the last two recessions, new application filings declined (2001, by -21.0%; 2002, by -12.7%; and 2009, by -12.3%), demonstrating the sensitivity of trademark filings, and therefore total revenues, to general economic conditions. So far, the current economic downturn has produced similar estimates of trademark application filing declines. However, during ordinary economic times, application filings generally have increased by an average historical rate of between 7% and 8% per year. USPTO anticipates a return to this historical trend as trademark applicants return to expected activities. To ensure its ability to keep pace with demand, the USPTO is in the midst of a multi-year IT systems and infrastructure upgrade, which is critical to the future of the U.S. trademark registration system and represents a significant cost to the Office.

The current fee schedule is insufficient to meet future budgetary requirements to: (1) meet the expenses that will result from projected filings based on expectations for fee revenues; (2) recover the costs necessary to support trademark and TTAB operations and administrative services; (3) make necessary investments in IT systems, intellectual property (IP) policy, and USPTO programs related to trademark and TTAB operations; and (4) achieve optimal operating reserve levels to ensure financial sustainability.

Budgetary requirements have increased by 22% from FY 2019 to FY 2020 to address unplanned pay raises, additional review for potential fraud, post-registration audits, agency administrative operations, and continued investments in IT that require additional funding beginning in FY 2020. Without the proposed fee adjustments, based on the assumptions found in the FY 2021 Congressional Justification, budgetary requirements

would exceed revenues and available operating reserve balances beginning in FY 2022 through FY 2025 (*see* Table 1).

Table 1: Trademark Financial Outlook Without Proposed Fees—FY 2021-FY 2025

	Dollars in Millions				
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Projected Fee Collections	\$367	\$390	\$412	\$430	\$447
Other Income	6	6	6	6	6
Total Projected Fee Collections and Other Income	\$373	\$396	\$418	\$436	\$453
Budgetary Requirements	\$419	\$460	\$462	\$478	\$497
Funding to (+) and from (-) Operating Reserve	-46	-64	-44	-42	-44
EOY Operating Reserve Balance	26	(38)	(81)	(123)	(167)
Over/(Under) \$75M Minimum Level	(49)	(113)	(156)	(198)	(242)
Over/(Under) Optimal Level	(184)	(268)	(312)	(362)	(415)

Table 2 below shows the available revenue and operating reserve balances by fiscal year, including the proposed fee rates in the projected fee collections. The numbers in the table below can be found in the FY 2021 Congressional Justification and were developed in late calendar year 2019, prior to the COVID-19 outbreak. Under current circumstances, it is difficult to predict what the actual numbers will be. However, since USPTO was projecting insufficient funding even during an economic expansion (*see* Table 1) and the trademark financial outlook has only worsened since the onset of the pandemic, USPTO still believes that a fee increase will be necessary to put the Office on a sustainable financial path.

Table 2: Trademark Financial Outlook Including Proposed Fees—FY 2021-FY 2025

	Dollars in Millions				
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025

Projected Fee Collections	445	472	498	519	539
Other Income	6	6	6	6	6
Total Projected Fee Collections and Other Income	451	478	504	525	545
Budgetary Requirements	419	460	462	478	497
Funding to (+) and from (-) Operating Reserve	31	18	42	47	48
EOY Operating Reserve Balance	103	121	163	211	259
Over/(Under) \$75M Minimum Level	28	46	88	136	184
Over/(Under) Optimal Level	(107)	(109)	(68)	(28)	10

Additional information on estimated costs can be found in the USPTO FY 2021 Congressional Justification at <https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information>, which includes two revenue estimates, one based on the current fee schedule and another based on this proposed rule (*see* Appendix IV: USPTO Fees—Change from FY 2020 PB to FY 2021 PB).

The USPTO, as a fully fee-funded agency, retains an operating reserve to ensure sufficient financial resources are available to support and promote public confidence in the U.S. IP system. The operating reserve enables the USPTO to maintain operations by absorbing and responding to immediate and temporary changes in its economic and operating environments or circumstances, such as unexpected economic downturns, reducing the risk for short-term financial actions and providing the security for long-term strategic investments, such as IT development projects that are crucial to operations and customer support. An adequate operating reserve also allows the USPTO to continue serving its users in the event of a short-term lapse in congressional appropriations or a sudden economic downturn. Trademark filings exhibit a strong connection to domestic and global economic activity, responding quickly to economic shocks, as experienced in the 2001-2002 and 2009 recessions and most recently in 2020. The operating reserve is the primary tool to mitigate the sudden impact of these unforeseen events.

Another fee setting goal of this rulemaking is to set individual fees to further key IP protection policy objectives while taking into account the cost of a particular service. The USPTO seeks to enhance trademark protection for IP rights holders by offering application-processing options and promoting IP protection strategies.

Aligning fees with costs: The first fee setting policy consideration is to set and adjust trademark fees to more closely align those fees with the costs of providing the relevant services. The overall goal is to achieve total cost recovery from fee collections for trademark and TTAB operations, including associated administrative services. In determining which fees to set or adjust, this proposed rule targets changes to the category of fees where the gap between the cost of the service and the current fee rate is the greatest, and addresses policy objectives. Application filing fees, petition fees, and TTAB fees do not fully cover the costs of processing and examination for those services. Instead, these costs are recovered or subsidized from fees paid for intent-to-use and post-registration maintenance filings that return more than the costs of processing such filings. For example, using FY 2019 earned revenue compared to costs or expenses, application filing fees recovered 65% of expenses, petition (trademark processing) fees recovered 50% of expenses, and TTAB fees recovered just 31% of expenses (*see* Table 3).

Table 3: Earned Revenue vs. Expense by Trademark Product

Trademark Products	FY 2019 Earned Revenue	FY 2019 Expense	FY 2019 Variance	Earned Revenue vs. Expense or Cost Recovery
Application Filings	\$190,457,284	\$291,678,207	(\$101,220,923)	65%
Intent to Use/Use Fees	\$49,885,175	\$17,154,805	\$32,730,370	291%
Trademark Processing Fees	\$2,619,600	\$5,212,800	(\$2,593,200)	50%

Maintaining Exclusive Rights	\$79,942,987	\$13,991,853	\$65,951,134	571%
Madrid Protocol	\$4,294,675	\$1,006,834	\$3,287,841	427%
Other Trademark Fees	\$10,571,283	\$8,902,431	\$1,668,852	119%
Trademark Trial and Appeal Board	\$8,452,900	\$27,633,083	(\$19,180,183)	31%
Total	\$346,223,905	\$365,580,013	(\$19,356,109)	

The proposed fee schedule would increase the percentage of fee revenues for application filings by 21%, for petition filings by 101%, and for TTAB filings by 58% overall, thereby increasing the cost recovery for these services (*see* Table 4). If the proposed fee schedule were implemented, based on the assumptions found in the FY 2021 Congressional Justification, the USPTO projects that trademark fee collections in total would increase by an average of 21% per year, or \$77 million, to \$92 million per year over the five-year planning period as compared to the baseline (*see* Table 5).

Table 4: Increase in Cumulative Revenue, by Product

Trademark Products	Projected Cumulative Revenue, FY 2021-2025		% Increase
	Current Fee Rates (Baseline)	NPRM Fee Rates	
Application Filings	\$1,078,986,925	\$1,300,666,600	21%
Maintaining Exclusive Rights	\$517,806,550	\$659,008,548	27%
Intent to Use/Use	\$292,887,325	\$292,887,325	0%
Madrid	\$29,201,550	\$42,258,078	45%
TTAB	\$52,602,400	\$83,164,508	58%
Petition	\$17,508,400	\$35,147,450	101%
Other Processing Fees	\$58,391,905	\$58,391,905	0%
Total	\$2,047,385,055	\$2,471,524,413	21%

Table 5: Annual Increases in Aggregate Revenue

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Average
Aggregate Revenue—Baseline	\$367,001,856	\$390,327,171	\$412,360,921	\$430,391,196	\$447,303,911	\$409,477,011
Aggregate Revenue—NPRM	\$443,946,233	\$471,660,715	\$497,754,151	\$519,026,516	\$539,136,798	\$494,304,883
\$ Increase	\$76,944,377	\$81,333,544	\$85,393,230	\$88,635,320	\$91,832,887	\$84,827,872
% Increase	21.0%	20.8%	20.7%	20.6%	20.5%	20.7%

Estimated revenues are based on adjustments made from public comments included in this rulemaking.

Protecting the integrity of the trademark register: The second fee setting policy consideration is to set or adjust fees to improve the accuracy of the trademark register. The accuracy of the trademark register as a reflection of marks that are actually in use in commerce in the U.S. for the goods/services identified in the registrations listed therein serves a critical purpose for the public and for all registrants. An accurate register allows the public to rely on the register to determine potential trademark rights. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to American businesses, by allowing them to strengthen and safeguard their brands and related investments. The public relies on the register to determine whether a chosen mark is available for use or registration. When a person's search of the register discloses a potentially confusingly similar mark, that person may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, initiating proceedings to cancel the registration or oppose the application of the disclosed mark, engaging in civil litigation to resolve a dispute over the mark, or changing business plans to avoid the use of that person's chosen mark. In addition, such persons may incur costs and burdens unnecessarily if a registered mark is not actually in use in commerce in the U.S. or is not in use in commerce in connection with all the goods/services identified in the registration. An accurate and reliable trademark register helps avoid such needless costs and burdens.

This proposed rule sets and adjusts fees to encourage actions by trademark filers that help facilitate more efficient processing and the prompt conclusion of application prosecution by assessing fees for requests for reconsideration filed more than three months after a final Office action and for second and subsequent extension requests to

file appeal briefs. In addition, filings that may result in a less accurate register, including post-registration filings to maintain registrations that may include goods or services for which the mark is no longer in use, are among those filings targeted under this objective. The new fee structure for requests for reconsideration and requests to delete goods, services, and/or classes from a registration would protect the integrity of the register and the efficiency of the process by incentivizing both more timely filings and proactive action by applicants and registrants. The increased efficiencies realized through the proposed rule will benefit all applicants and registrants by allowing registrations to be granted sooner and more efficiently by removing unused marks and unsupported goods and services from the register.

Improving the efficiency of USPTO processes: The third fee setting policy consideration pertains to improving the efficiency of the trademark and TTAB processes. To that end, this proposed rule targets changes to fees that will administratively improve application and appeal processing by incentivizing more complete and timely filings and prosecution. For example, TEAS Plus, the lowest-cost TEAS application filing option, has more stringent initial application requirements and thus tends to result in a more complete application, which expedites processing, shortens pendency, minimizes manual processing and the potential for data-entry errors, and is thus more efficient for both the filer and the USPTO. While the per-class fee for TEAS Plus would increase by \$25 to \$250 under this proposal, the per-class fee for TEAS Standard, which has less stringent initial application requirements, is proposed to increase by \$75 to \$350, resulting in a difference of \$100 in the per-class fees of the respective filing options (double the current

difference of \$50), providing an increased financial incentive to choose the TEAS Plus filing option.

Ensuring financial sustainability to facilitate effective trademark operations:

The fourth fee setting policy consideration pertains to ensuring sufficient revenue to recover the aggregate costs of trademark operations in future years. Additional fees are necessary to fund the multi-year project to upgrade IT systems and infrastructure, while also maintaining a sufficient operating reserve balance to ensure sustainable funding that will mitigate the risk of unplanned financial disruptions that could threaten operations and planned investments. Operating reserves are intended to mitigate operational risk caused by a lack of financial resources. The USPTO defines an optimal balance and a minimum acceptable balance for each operating reserve—the patent operating reserve and the trademark operating reserve. The optimal balances set the goal for building and maintaining the operating reserves. The optimal trademark reserve has been determined to be six months of operating or budgetary requirements based on a review of environmental risk factors and financial volatility. Risks related to spending and fee collections are analyzed, considering the likelihood and consequence of each and its impact to financial stability, in determining the optimal reserve levels.

An increase in fees will provide a stable financial foundation to fulfill the USPTO mission and maintain performance. The budgetary requirements of the USPTO are comprised of substantial fixed costs, which may require increased fee rates to ensure revenue sufficient to recover aggregate costs. The trademark fee schedule proposed here, based on the assumptions found in the FY 2021 Congressional Justification, will produce sufficient revenue to recover the aggregate costs of trademark and TTAB operations,

including executing USPTO strategic goals, policy objectives, and initiatives in FY 2020 and beyond; creating a better and fairer cost-recovery system that balances subsidizing costs to encourage broader usage of IP rights-protection mechanisms and participation by more trademark owners; promoting a strong incentive for more efficient filing behaviors; and protecting the federal trademark register as a reliable indicator of marks in use in commerce. The projections of aggregate revenues and costs are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in estimating both fee collections and budgetary requirements in ordinary times, and even more so now. In addition to the pandemic, a number of other risks could materialize (e.g., even lower applications volumes, decreased renewals, the recompetitions of major contracts, lease renewals, changing assumptions about Presidentially authorized or congressionally mandated employee pay raises, etc.) that could change the USPTO's budgetary outlook. These estimates are refreshed annually in the formulation of the USPTO's Budget, and the USPTO continues to gain new data as the pandemic unfolds. As noted above, in addition to these dynamics factors, the budgetary requirements of the USPTO are comprised of substantial fixed costs, which could also influence increased fee rates to ensure aggregate revenue recovers aggregate costs.

Individual fee rationale: Based on the assumptions found in the FY 2021 Congressional Justification, the USPTO projects the aggregate revenue generated from current and proposed trademark fees will recover the prospective aggregate costs of its trademark and TTAB operations and associated administrative services. However, each individual proposed fee is not set at an amount equal to the estimated cost of performing the activities related to the fee. Instead, as described above, some of the proposed fees are

set to address increases in budgetary requirements as well as balance several key policy factors, and executing these policy factors through the trademark fee schedule is consistent with the goals and objectives outlined in the Strategic Plan. Once the cost recovery and key policy objectives are considered, fees are set at, above, or below individual cost-recovery levels for the service provided. Additional details on the cost methodologies used to derive the historical fee unit expenses can be found in “USPTO Fee Setting—Activity Based Information and Trademark Fee Unit Expense Methodology” at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Trademark application filing fees: This proposed rule would increase all application filing fees by varying amounts. The filing fee for a paper trademark application would increase by \$150, from \$600 per class to \$750 per class. The TEAS Plus application filing fee would increase by \$25, from \$225 per class to \$250 per class. The TEAS Standard application filing fee would increase by \$75, from \$275 per class to \$350 per class. The fee for filing an application under section 66(a) of the Act would increase by \$100, from the equivalent of \$400 per class, as paid in Swiss francs, to the equivalent of \$500 per class, as paid in Swiss francs.

Also proposed is a decrease of the processing fee from \$125 to \$100 per class for failure to meet the filing requirements under § 2.22(a) for a TEAS Plus application. Thus, if the processing fee is required in a TEAS Plus application, the resulting per-class fee would equal the per-class fee for a TEAS Standard application. If a decrease in the processing fee were not enacted, the per-class fee for an application initially filed as TEAS Plus would exceed the fee for TEAS Standard, creating a disincentive to choose

TEAS Plus, which, as noted above, tends to be more efficient for both filers and the USPTO.

Fees for paper trademark filings: This proposed rule maintains the cost differential for all paper filings to better align fees with costs, with all trademark processing fees for paper filings set \$100 to \$200 higher than the corresponding electronic filing fees (per class, when applicable). Overall, it is more costly for the USPTO to process paper filings than electronic filings, and that cost is not recovered by the current fees for paper filings. Raising the fees for paper filings will help offset the higher processing costs and move the USPTO closer to total cost recovery.

At present, most filings are submitted electronically. For example, in FY 2019, less than 0.02% of initial applications were filed on paper. Moreover, a final rule published on July 31, 2019 (84 FR 37081), which became effective on February 15, 2020 (84 FR 69330), requires all applicants, registrants, and parties to TTAB proceedings to file electronically through TEAS all trademark applications based on section 1 and/or section 44 of the Act, 15 U.S.C. 1051, 1126, and all submissions filed with the USPTO concerning applications or registrations, with limited exceptions. Thus, an increase to paper filing fees would have no impact on the vast majority of applicants and registrants who are required to file documents electronically.

Other trademark processing fees: The USPTO also proposes to increase certain other trademark processing fees to further key policy goals. This proposed rule sets out increases to the fees for petitions to the Director as well as section 8 and section 71 affidavits. In addition, this proposed rule sets new fees and procedural regulations for filing a letter of protest and new fees for filing a request for reconsideration more than

three months after a final Office action, and for deleting goods, services, and/or classes from a registration after submission and prior to acceptance of a section 8 or section 71 affidavit.

(1) Petitions to the Director in trademark matters: The USPTO proposes to establish two levels of fees for petitions. This proposed rule would increase the current fee for filing a petition to the Director for petitions filed under §§ 2.146 or 2.147. It would also establish a separate fee for petitions to revive filed under § 2.66 that would be less than the fee for petitions filed under §§ 2.146 or 2.147. The proposed fees are intended to facilitate effective trademark operations. The fee for electronically filing a petition to the Director under §§ 2.146 or 2.147 would increase from \$100 to \$250, and the fee for filing on paper would increase from \$200 to \$350. The fee for electronically filing a petition to revive an abandoned application under § 2.66 would increase from \$100 to \$150, and the fee for filing on paper would increase from \$200 to \$250.

Generally, petitions under § 2.146 extend the trademark registration and post-registration processes by introducing additional processing and examination into the timeline, which may lead to applications and registration maintenance documents remaining pending for longer periods of time, potentially blocking others. By increasing fees for these filings, the USPTO would discourage misuse of the process through unnecessary filings that delay prosecution of an application or registration maintenance document. The comments provided in the TPAC report received by the USPTO also generally supported the increases to the fees for petitions to the Director under § 2.146 and a smaller increase for petitions under § 2.66.

(2) Section 8 or section 71 affidavits: Fees from post-registration filings have historically been set to recover more than the costs of processing the filings. The fees are used to offset cost recovery for application processing and examination as well as TTAB proceedings and appeals. In general, fewer post-registration maintenance filings are made by pro se and foreign registrants. Compounding this issue, pro se and foreign owners comprise a growing share of new applicants. Based on recent pre-pandemic trends, the overall percentage of registrations being maintained is decreasing. Therefore, the USPTO anticipates that it will face a continuing decrease in revenue from maintenance filings going forward if adjustments are not made. Increasing fees for section 8 and section 71 affidavits is necessary to continue to provide cost-recovery offsets and allow other fees to remain below their individual unit costs.

Increased fees are also proposed for these filings in part because of the post-registration audit program, which was implemented as a result of the 2012 Post-Registration Proof-of-Use Pilot Program. During the pilot program, section 8 or section 71 affidavits for 500 registrations were reviewed as to actual use of the marks in connection with the goods and/or services identified in the registrations in order to assess the accuracy and integrity of the trademark register. The findings of the pilot program demonstrated a need for ongoing measures for additional review of these filings on a permanent basis. Since codifying the authority to require additional information and evidence concerning the use of registered marks in connection with section 8 and 71 maintenance filings in 2017 (82 FR 6259), the USPTO has conducted additional reviews of the actual use of the marks in 8,276 section 8 or section 71 affidavits through January 1, 2020. In more than 50% of the registrations undergoing the additional review, the

registrations have either been removed from the register or had goods or services deleted, resulting in a more accurate trademark register. The proposed fee increases would support the cost of this additional review.

(3) Letters of protest in trademark applications: The USPTO proposes a new \$50 fee for filing a letter of protest. A letter of protest allows a third party to bring to the attention of the USPTO evidence bearing on the registrability of a mark in a pending application. The letter-of-protest procedure exists for the administrative convenience of the Office and is not a substitute for the statutory opposition and cancellation procedures available to third parties who believe they would be damaged by registration of the involved mark. It is intended to aid in examination without causing undue delay and without compromising the integrity and objectivity of the ex parte examination process, which involves only the applicant and the Office. For this reason, the protestor is not permitted to submit legal arguments, contact the examining attorney assigned to the subject application, or participate in any Office proceedings relating to the protest or the application to which it is directed. The limited involvement of the third party ends with the filing of the protest. The questions of whether or not evidence is relevant to a refusal ground appropriate in ex parte examination, a refusal should be made, or a registration will issue are matters for the Office to determine during the ex parte examination process that occurs between the applicant and the Office acting on behalf of the public.

Filing a letter of protest currently requires no fee, but the Office incurs costs associated with the work of reviewing and processing each letter. The filing volume for letters of protest has steadily increased in recent years, with the USPTO receiving 2,726 in FY 2017, 3,480 in FY 2018, and 4,106 in FY 2019. Thus, letters of protest continue to

generate increasing additional expenses, and under the current schedule where letters can be filed without any fee, these expenses would likely only increase in the future.

Many preliminary commenters expressed concerns about this proposed fee, noting that letters of protest provide a valuable service to the USPTO and should not be discouraged by requiring a fee for submission. The USPTO recognizes that, in many cases, letters of protest assist the Office in obtaining evidence to support refusals of registration, helping to avoid marks that are ineligible for registration being placed on the trademark register. Currently, all letters of protest must be reviewed in accordance with the procedures set out in TMEP § 1715 to determine whether: (1) the issue raised is an appropriate subject for a letter of protest; (2) the protest was submitted before or after publication of the subject application; (3) the nature, amount, and format of the evidence complies with the requirements set out in the TMEP; and (4) the submitted evidence meets the relevant standard for entry in the record and review by the examining attorney. If the letter of protest is filed before publication of the subject application, the evidence must be relevant to the identified ground(s) for refusal, and the entry of evidence into the application record merely serves to bring the submitted evidence to the attention of the examining attorney, who determines whether a refusal or requirement should be raised or ultimately made final. If the letter of protest is filed on the date of, or within 30 days after, publication of the subject application, the evidence must establish a prima facie case for refusal on the identified ground(s), such that failure to issue a refusal would likely result in the issuance of a registration in violation of the Act or regulations under parts 2 or 7 of this section.

In FY 2019, the evidence in approximately 25% of pre-publication letters of protest and 94% of post-publication letters of protest was not forwarded to the examining attorney. This suggests that a significant portion of filings do not contain relevant information or evidence, or are otherwise unnecessary. These filings generate additional costs without a corresponding benefit.

Seeking to balance the commenters' concerns with the need to recover some costs, the proposed fee of \$50 is set at a level high enough to partially offset processing costs and deter the filing of unsupported or irrelevant filings, but low enough so as not to discourage the filing of relevant, well-supported letters of protest. This fee level is also consistent with the TPAC recommendations in that it falls within the \$20 to \$100 fee range suggested by the TPAC report.

In connection with this proposed fee, the USPTO also proposes a new regulatory section, at 37 CFR 2.149, which sets out the procedures for letters of protest. The new regulatory section is based on the existing longstanding procedures for letters of protest, which are currently set forth in the TMEP, with appropriate modifications that more closely align the procedures with those for similar third-party submissions and protests in patent applications under 37 CFR 1.290 and 1.291 and as set out in MPEP §§ 1134 and 1901. This action is being undertaken at this time due to the rising volume of letters of protest in recent years, which has resulted in the need to codify procedures for submission of such protests in the regulations.

Under the procedures set forth in the proposed regulatory text at § 2.149, a letter of protest must be timely filed through TEAS and must include: (1) the proposed fee; (2) the serial number of the pending application that is the subject of the protest; (3) an

itemized evidence index that includes identification of the documents, or portions of documents, being submitted as evidence and a concise factual statement of the relevant grounds for refusal of registration appropriate in ex parte examination that each identified item supports; and (4) a clear and legible copy of the supporting evidence identified in the evidence index. As noted above, if the letter of protest is filed before publication of the subject application, the evidence must be relevant to the identified ground(s) for refusal. If filed on or within 30 days after publication of the subject application, the evidence must establish a prima facie case for refusal on the identified grounds, such that failure to issue a refusal or make a requirement would likely result in issuance of a registration in violation of the Act or regulations under parts 2 or 7 of this section.

The letter-of-protest process is intended to provide an opportunity for the protestor to efficiently and effectively provide relevant evidence in support of the proposed legal grounds for refusing registration of the application identified in the submission. It is inappropriate for the protestor to “dump” evidence and leave it to the Office to determine its possible relevance. Therefore, an index is required for all submissions listing the documents submitted as evidence and the ground(s) for refusal each item of evidence supports. In addition, the proposed procedures also require that the submission not total more than 10 items of evidence in support of a specified ground of refusal and more than 75 total pages of evidence without a detailed and sufficient explanation that establishes the special circumstances that necessitate providing more than 10 items of evidence per refusal ground or more than 75 total pages of evidence. This requirement encourages the submission of evidence that is succinct, not duplicative, and limited to the most relevant evidence. It should be a rare situation in which more than

10 items of evidence or 75 total pages of evidence is necessary to support the proposed legal grounds for refusal. However, some examples of situations that might constitute such special circumstances are when: (1) a subject application includes multiple classes and the protestor needs to provide evidence of relatedness of the goods/services for all classes in the application; (2) evidence submitted to support a refusal for descriptiveness consists of fewer than 10 discrete items, but each item comprises multiple pages, totaling more than 75 pages; or (3) a protestor raises more than one ground for refusal and the evidence necessary to support all grounds raised totals more than 10 items or 75 pages.

A letter of protest submitted by a third party is not made part of the application record to preserve the ex parte nature of examination. If the USPTO determines that the submission complies with the proposed regulations, only the specified grounds for refusal and the provided evidence relevant to the grounds for refusal would be included in the application record for consideration by the examining attorney. A third party filing a letter of protest will not receive any communication from the USPTO relating to the submission other than acknowledgement that it has been received by the Office and notification of whether the submission is found to be compliant or non-compliant. Also, the Office will not accept amendments to a non-compliant submission that was previously filed or requests to reconsider a compliance determination. Rather, the third party may submit a new letter of protest that is compliant if the time period for submitting a letter of protest has not closed. A protestor does not, by the mere filing of a protest, obtain a “right” to argue the protest before the Office. As noted above, the questions of whether or not evidence is relevant to a refusal ground appropriate in ex parte examination, a refusal will be made, or a registration will issue are matters for the Office

to determine as part of the ex parte examination process that occurs between the applicant and the Office acting on behalf of the public. Therefore, the proposed procedures also provide that: (1) the Office's determination whether to include submitted evidence in the record of an application would be final and non-petitionable, (2) the limited involvement of the third party ends with the filing of the letter of protest, and (3) the third party may not directly contact the examining attorney assigned to the application.

(4) Requests for reconsideration in trademark applications: The USPTO proposes a new fee for a request for reconsideration filed more than three months, but within six months, after the issue date of a final action or with a petition to revive an abandoned application. The proposed fee is \$400 for a TEAS submission and \$500 for a paper submission. No fee would be incurred for requests filed within three months of the issue date of a final action.

As noted above, a request for reconsideration is a document filed within six months of the issue date of a final action that responds to the outstanding refusals or requirements. In some cases, it may also be filed with a petition to revive an application abandoned for failure to respond to a final action within the six-month response period. In such cases, the request for reconsideration would be filed more than six months after the issue date of the final action. It also includes an applicant's request to the TTAB, filed within six months of the issue date of a final action, whether filed with or after a notice of appeal and whether it is denominated as a request for reconsideration or is captioned as something else, such as a request for remand (*see* TMEP § 709.05 and TBMP § 1209.04). In some cases, multiple requests are filed. Examining attorneys must review the request(s) for reconsideration and take appropriate action, which frequently involves

issuing a subsequent Office action that discusses any new evidence submitted with the request. In some circumstances, Office procedure requires the examining attorney to issue a new refusal, with a new six-month response deadline.

Because requests for reconsideration require additional examination, they generate additional costs for the USPTO. In addition, requests for reconsideration lengthen the examination process, thereby increasing overall examination pendency, particularly when filed later in the response period or after the filing of a notice of appeal and prior to the expiration of six months from the issue date of the final action. The proposed fee is intended to recover costs associated with requests for reconsideration and encourage applicants to submit these filings earlier in the response period for the final action.

The TPAC report expressed concerns that the proposed fee was too high and could discourage the filing of requests for reconsideration, which often resolve issues and avoid the need for an appeal. The TPAC report therefore suggested that the Office consider not charging a fee for requests filed within three months of the final Office action. The USPTO has considered and adopted the suggestion from the TPAC report.

(5) Deletion of goods, services, and/or classes from registrations: The USPTO initially proposed fees for each good or service deleted as a result of a post-registration audit or an adverse TTAB finding of \$200 if submitted on paper or \$100 if submitted through TEAS. The TPAC report expressed concerns regarding how the fees would be assessed because it could be difficult to determine what is a separate good or service in some situations, and some registrants with extensive goods and services could potentially be assessed onerous fees to delete specific goods or services within a class. The TPAC

report supported a fee for the deletion of goods or services as a result of a post-registration audit if the proposed fees were charged per each class in which goods or services are deleted. The report also supported a no-fee option for voluntarily cancelling goods or services from a registration at any time prior to an audit. The TPAC report did not support the proposed new fees following an adverse TTAB finding, stating that it would be unclear when the fee would apply and how it would be implemented.

Currently, amendments to registrations may be made by filing a section 7 request for amendment or correction of a registration for \$100, if submitted through TEAS, or \$200, if filed on paper. After consideration of the TPAC response, the USPTO proposes to set a \$0 fee for a section 7 request that is filed through TEAS prior to the submission of a section 8 or section 71 affidavit and consists only of a request to delete specified goods, services, and/or classes. As noted above, no additional fee would be incurred for section 8 or section 71 affidavits that specify fewer than all of the goods or services listed in the registration when the affidavit is filed, which results in the deletion of goods or services not included in the affidavit from the registration. However, if goods, services, and/or classes are deleted in a section 7 request, a response to Office action, or a voluntary amendment filed after submission and prior to acceptance of a section 8 or section 71 affidavit, the USPTO proposes a new fee of \$250 per class, if filed through TEAS, or \$350 per class, if a paper filing is permitted, for deleting goods, services, and/or classes from the registration.

The proposed no-fee option would be available to, and the \$250 (or \$350) per-class fee would be assessed against, all registrants. Thus, they are not related to a post-registration proof-of-use audit or a TTAB finding. The proposals are intended to improve

the accuracy and integrity of the register by encouraging all registrants to proactively perform sufficient due diligence before filing a section 8 or section 71 affidavit to determine the goods, services, and/or classes for which the registered mark is no longer in use and delete them from the registration.

TTAB fees: The Office proposes to set or adjust 16 TTAB-related fees: 10 fees would be increased for initiating a proceeding, and six new filing fees would be established. The TTAB would also obtain discretion to grant a refund of a portion of the filing fee for a petition to cancel.

(1) Existing fees at the TTAB: In an attempt to address better alignment of fees with the costs of providing TTAB services, the initial fee proposal presented to the TPAC included an across-the-board increase in TTAB fees for petitions for cancellation, notices of opposition, and ex parte appeals of \$200 per class. The TPAC report generally supported an increase in filing fees for petitions to cancel and notices of opposition on the basis that the proposed increases are justified on a cost-recovery rationale, noting the high average unit cost for these proceedings. The TPAC report and some commenters observed that many petitions to cancel and notices of opposition are decided by default judgment. Commenters objecting to the preliminary proposed fee increase for petitions to cancel expressed their belief that the increase could deter filings based on abandonment or nonuse, which would impact the USPTO's objective of removing marks from the trademark register that are no longer being used.

In consideration of these observations, the Office proposes an increase of \$200 per class for petitions for cancellation and notices of opposition. The Office also proposes to amend § 2.114(a) to allow the USPTO discretion to refund a portion of the petition fee

in cases of default judgment where there is no appearance by a defendant and no filings are made other than the petition to cancel, reflecting reduced work needed on the part of the TTAB; consequently, this amount is in excess of that required to offset TTAB costs. The resulting lower net fee for a petition to cancel that meets these characteristics also furthers the policy goal of not discouraging the filing of petitions to cancel by petitioners with knowledge that a registered mark is no longer in use, or was never put to use, and therefore should be removed from the register. The refund would be in the amount of \$200. Compared to cancellation proceedings, an opposition is less likely to be determined by default judgment based on abandonment or nonuse, because the applicants involved tend to be actively engaged with the USPTO through the examination process up to the opposition, and the Office is not proposing to allow for refunds concerning notices of opposition.

The TPAC report expressed some concern about the preliminary proposed increase for filing a notice of ex parte appeal, noting that, for various reasons, many appeals are resolved before an appeal brief is filed. Some commenters expressed their belief that the proposed increase would negatively impact small businesses and individuals. In consideration of the comments, the Office herein proposes to increase the filing fees for a notice of appeal to \$325 per class if filed on paper and \$225 per class if filed through ESTTA, which is a \$25 increase (rather than the \$200 increase to both fees in the preliminary proposal).

Fee increases are proposed for filing requests for an extension of time to file an opposition. Under the current structure, applicants may request: (1) an initial 30-day extension for no fee, (2) a subsequent 60-day extension for a fee of \$100 for electronic

filings and \$200 for paper filings, and (3) a final 60-day extension for a fee of \$200 for electronic filings and \$300 for paper filings. The Office proposes to maintain this tiered structure with an increase of \$100 for the first 60-day electronic extension and \$200 for the final 60-day electronic extension. Paper-filed extension requests are proposed to increase by \$200 for each filing. The current and proposed filing fees are per application, not per class.

These proposed fees are designed to yield efficiencies by encouraging potential opposers to make decisions regarding filing an opposition sooner, thus reducing delays to applicants whose filings have been made the subject of extensions of time to oppose. Additionally, by encouraging earlier decisions to initiate proceedings, the uncertainty experienced by these applicants will be ameliorated by having their applications proceed to determination on the merits sooner. This should also help to protect the integrity of the trademark register by encouraging timely decisions and filings to ensure that the rights of other applicants and the public are not adversely affected.

The TPAC report expressed some concerns over the proposed increase in these fees, noting that extension fees were implemented about three years prior and that raising them may result in a higher number of oppositions being filed because the decision is rushed. Some commenters were concerned that the proposed increases would impact smaller entities and deter parties from working to settle prior to filing a notice of opposition. Given that the USPTO also proposes increasing the fee for the notice of opposition, the USPTO believes that the proposed fees for extensions of time to oppose should encourage earlier calculated decisions based on all of the available information,

including fees. Furthermore, the tiered fee structure reduces the likelihood of potential opposers using the extensions merely to delay registration of pending applications.

Approximately two-thirds of the cost of TTAB operations is subsidized currently by revenue from other trademark processing fees. The proposed increases in these TTAB fees will not recover the full costs of TTAB operations but will increase revenues by 7% to bring fees closer to the costs in order to provide better alignment between costs and fees and bring the TTAB closer to full cost recovery. In general, the TPAC commenters supported most of the proposed fee increases with some modification because of the recognized costs for processing and the cost differential.

Finally, these fees will help offset TTAB processing costs. In FY 2019, the USPTO received 20,502 requests for extensions of time to file a notice of opposition. It is customary for requests that delay processing of records, such as extensions, to incur a fee, which offsets costs associated with processing the filing, as well as the overall cost of processing appeals and trials. These fees are necessary to help attain primary Office goals of recovering the aggregate costs of operations, along with key policy considerations, such as encouraging efficient processing.

(2) Fees for filing an appeal brief at the TTAB: The Office proposes an increase in the fee for filing a notice of appeal of \$25 per class, based on inflation, and the establishment of new fees for filing an appeal brief of \$300 per class if filed on paper and \$200 per class if filed through ESTTA. In its initial proposal submitted to the TPAC, the Office had proposed raising the current fees for filing a notice of appeal to the TTAB by \$200 per class and also instituting new fees for filing briefs in a notice of appeal. The TPAC supported maintaining the current fees for filing a notice of appeal and the

proposed new fees for filing an appeal brief. This modification addresses the TPAC report recommendations to apply the majority of the aggregate increases in appeal fees to the costs incurred when an appeal brief is filed, which increases the likelihood that the appeal will have to be decided on the merits.

(3) Fees for filing requests for extension of time to file an appeal brief at the TTAB: New fees are proposed for second and subsequent requests for extensions of time to file an appeal brief. The proposed fees are \$200 per application if filed on paper and \$100 per application if filed through ESTTA. No fee is proposed for a first request for extension of time to file an appeal brief.

In its report on the initial proposal, the TPAC expressed support for the proposed new fees. Some commenters objected to the proposed new fees, expressing their belief that minimal USPTO resources are required to process such requests and that they increase the overall costs to smaller entities. These proposed fees yield efficiencies by encouraging applicants to move forward with their appeals, resulting in a quicker resolution of the appeal, the pendency of which can adversely impact the rights of other applicants and registrants. Implementing a two-tiered fee structure minimizes costs to smaller entities, as there is no fee for a first request for extension of time to file the appeal brief.

(4) Fees for oral hearing at the TTAB: A new fee is proposed for a request for an oral hearing. The proposed fee is \$500 per proceeding.

In its report on the initial proposal, the TPAC expressed support for the proposed new fee, noting that the TTAB incurs significant costs in conducting oral hearings and all users subsidize the few parties requesting oral hearings. Some commenters opposed the

fee due to the impact on small businesses and individuals. Oral hearings are not requested in the vast majority of cases before the TTAB. They are optional and are most useful when cases involve complex issues, a complex record, or highly technical goods and services. The proposed fee would help offset the costs of scheduling and conducting the hearing, as well as the maintenance of equipment for remote participation.

Discussion of proposed rule changes

The USPTO proposes to revise § 2.6(a)(1)(i) to increase the per-class fee for filing an initial application on paper from \$600 to \$750.

The USPTO proposes to revise § 2.6(a)(1)(ii) to increase the per-class fee for filing an application under section 66(a) of the Act from \$400 to \$500.

The USPTO proposes to revise § 2.6(a)(1)(iii) to increase the per-class fee for filing a TEAS Standard application from \$275 to \$350.

The USPTO proposes to revise § 2.6(a)(1)(iv) to increase the per-class fee for filing a TEAS Plus application from \$225 to \$250.

The USPTO proposes to revise § 2.6(a)(1)(v) to decrease the processing fee under § 2.22(c) from \$125 to \$100 per class.

The USPTO proposes to add § 2.6(a)(11)(iii) to establish a fee of \$0 for filing a section 7 request to amend a registration through TEAS prior to submission of a section 8 or section 71 affidavit and that consists only of the deletion of goods, services, and/or classes.

The USPTO proposes to revise § 2.6(a)(12)(i) and (ii) to increase the per-class fee for filing a section 8 affidavit from \$225 to \$325 for a paper submission and from \$125 to \$225 for a TEAS submission.

The USPTO proposes to add § 2.6(a)(12)(iii) and (iv) to establish fees for the deletion of goods, services, and/or classes after submission and prior to acceptance of a section 8 affidavit. The proposed § 2.6(a)(12)(iii) and (iv) set the per-class fee at \$350 for a paper submission and \$250 for a TEAS submission.

The USPTO proposes to revise § 2.6(a)(15) to establish separate fees for petitions to the Director under §§ 2.146 or 2.147 and petitions to revive an abandoned application under § 2.66. The proposed revisions to § 2.6(a)(15)(i) and (ii) set the fee for filing a petition to the Director under §§ 2.146 or 2.147 at \$350 for a paper submission and \$250 for a TEAS submission. The proposed addition of § 2.6(a)(15)(iii) and (iv) set the fee for filing a petition to revive an abandoned application under § 2.66 at \$250 for a paper submission and \$150 for a TEAS submission.

The USPTO proposes to revise § 2.6(a)(16)(i) and (ii) to increase the per-class fee for filing a petition to cancel from \$500 to \$700 for a paper submission and from \$400 to \$600 for an ESTTA submission.

The USPTO proposes to revise § 2.6(a)(17)(i) and (ii) to increase the per-class fee for filing a notice of opposition from \$500 to \$700 for a paper submission and from \$400 to \$600 for an ESTTA submission.

The USPTO proposes to revise § 2.6(a)(18) to increase the fee for filing an ex parte appeal and to establish new fees for requests for an extension of time to file an appeal brief and for filing a brief in an ex parte appeal. The proposed revisions to § 2.6(a)(18)(i) and (ii) increase the per-class fee for filing an ex parte appeal from \$300 to \$325 for a paper submission and from \$200 to \$225 for an ESTTA submission. The proposed addition of § 2.6(a)(18)(iii) sets the per-application fee for filing a first request

for an extension of time to file an appeal brief at \$0. The proposed addition of § 2.6(a)(18)(iv) and (v) sets the per-application fee for filing a second or subsequent request for an extension of time to file an appeal brief at \$200 for a paper submission and \$100 for an ESTTA submission. The proposed addition of § 2.6(a)(18)(vi) and (vii) set the per-class fee for filing a brief in an ex parte appeal at \$300 for a paper submission and \$200 for an ESTTA submission.

The USPTO proposes to revise § 2.6(a)(22)(i) and (ii) to increase the fee for filing a request for an extension of time to file a notice of opposition pursuant to § 2.102(c)(1)(ii) or (c)(2) from \$200 to \$400 for a paper submission and from \$100 to \$200 for an ESTTA submission.

The USPTO proposes to revise § 2.6(a)(23)(i) and (ii) to increase the fee for filing a request for an extension of time to file a notice of opposition pursuant to § 2.102(c)(3) from \$300 to \$500 for a paper submission and from \$200 to \$400 for an ESTTA submission.

The USPTO proposes to add § 2.6(a)(24) to establish a fee for filing a request for an oral hearing before the TTAB of \$500 per proceeding.

The USPTO proposes to add § 2.6(a)(25) to establish a fee of \$50 for the filing of a letter of protest per subject application.

The USPTO proposes to add § 2.6(a)(26) to set out fees for a request for reconsideration filed more than three months after a final action and within six months of the issue date of a final action or with a petition to revive an abandoned application. The USPTO proposes to add § 2.6(a)(26)(i) to establish a fee of \$0 for filing a request for reconsideration within three months after the issue date of a final action through TEAS.

The USPTO proposes to add § 2.6(a)(26)(ii) and (iii) to establish a fee of \$500 for a paper submission and \$400 for a TEAS or ESTTA submission for a request for reconsideration filed more than three months after and within six months of the issue date of a final Office action.

The USPTO proposes to revise § 2.114(a) to provide that a partial refund of the fee for a petition to cancel, equal to the increase in that fee otherwise proposed by this rulemaking, may be made in cases of default judgment where there was no appearance by a defendant and no filings are made other than the petition to cancel.

The USPTO proposes to add § 2.149, which codifies the procedures and requirements for letters of protest.

The USPTO proposes to revise the section title and to restructure § 2.161 to set out the requirements for section 8 affidavits or declarations more clearly. The USPTO also proposes to add, at revised § 2.161(c), a provision stating that if goods, services, and/or classes are deleted from a registration after submission and prior to the acceptance of a section 8 affidavit or declaration, the deletion must be accompanied by the relevant fee under proposed § 2.6(a)(12)(iii) or (iv) for each class from which goods, services, and/or classes are deleted.

The USPTO proposes to revise § 7.6(a)(6)(i) and (ii) to increase the per-class fee for filing a section 71 affidavit from \$225 to \$325 for a paper submission and from \$125 to \$225 for a TEAS submission.

The USPTO proposes to add § 7.6(a)(6)(iii) and (iv) to establish fees for the deletion of goods, services, and/or classes after submission and prior to acceptance of a

section 71 affidavit. The proposed § 7.6(a)(iii) and (iv) set the per-class fee at \$350 for a paper submission and \$250 for a TEAS submission.

The USPTO proposes to revise the section title and to restructure § 7.37 to set out the requirements for section 71 affidavits or declarations more clearly. The USPTO also proposes to add, at revised § 7.37(c), a provision stating that if goods, services, and/or classes are deleted from a registration after submission and prior to acceptance of a section 71 affidavit or declaration, the deletion must be accompanied by the relevant fee under proposed § 7.6(a)(6)(iii) or (iv) for each class from which goods, services, and/or classes are deleted.

Rulemaking requirements

A. America Invents Act: This rulemaking proposes to set and adjust fees under section 10(a) of the AIA as amended by the SUCCESS Act. Section 10(a) of the AIA authorizes the Director to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act for any services performed by, or materials furnished by, the USPTO (*see* section 10 of the AIA, Pub. L. 112-29, 125 Stat. 284, 316-17, as amended by Pub. L. 115-273, 132 Stat. 4158). Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the Federal Register any proposed fee change under section 10 and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the USPTO provide a public comment period of not less than 45 days.

The TPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of trademark operations. When adopting fees under section 10 of the AIA, the AIA requires the Director to provide the TPAC with the proposed fees at least 45 days prior to publishing them in the Federal Register. The TPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing(s) on the proposed fees. The TPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the USPTO issues any final fees. The USPTO will consider and analyze any comments, advice, or recommendations received from the TPAC before finally setting or adjusting fees.

Consistent with the requirements of the AIA, on August 28, 2019, the Director notified the TPAC of the USPTO's intent to set or adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

The TPAC held a public hearing in Alexandria, Virginia, on September 23, 2019. Transcripts of this hearing and comments submitted to the TPAC in writing are available for review at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The TPAC subsequently issued a report, dated October 31, 2019, regarding the preliminary proposed fees. The report can be found online at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

B. Initial Regulatory Flexibility Analysis: The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) to examine the impact of the USPTO's proposed changes to trademark fees on small entities and to seek the public's views. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities (*see* 5 U.S.C. 603, 605). This IRFA incorporates the discussion of the proposed changes in the preamble above.

Items 1-5 below discuss the five items specified in 5 U.S.C. 603(b)(1)-(5) to be addressed in an IRFA. Item 5 below discusses alternatives to this proposal that the USPTO considered.

1. Description of the reasons that action by the USPTO is being considered:

The USPTO proposes setting and adjusting certain trademark fees as authorized by section 10 of the AIA, as amended by Pub. L. 115-273, 132 Stat. 4158 (the SUCCESS Act). The fee schedule proposed under section 10 in this rulemaking will, based on the assumptions found in the FY 2021 Congressional Justification, recover the aggregate estimated costs to the USPTO while achieving strategic and operational goals, such as implementing measures to maintain trademark pendency and high trademark quality, modernizing the trademark IT systems, continuing important programs for stakeholder and public outreach, enhancing operations of the TTAB, and maintaining a sufficient operating reserve. Aggregate costs are estimated through the USPTO budget formulation

process with the annual preparation of a five-year performance-based budget request. Revenues are estimated based on the projected demand (workload) for trademark products and services and fee rates.

2. Succinct statement of the objectives of, and legal basis for, the proposed rule:

The policy objectives of the proposed rule are to: (1) better align fees with costs, (2) protect the integrity of the trademark register, (3) improve the efficiency of USPTO processes related to trademark and TTAB operations, and (4) ensure financial sustainability to facilitate effective trademark operations. The legal basis for the proposed rule is section 10 of the AIA, as amended, which provides the authority for the Director to set or adjust by rule any fee established, authorized, or charged under the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended. *See also* section 31 of the Trademark Act, 15 U.S.C. 1113.

3. Description of and, where feasible, estimate of the number of affected small entities:

The USPTO does not collect or maintain statistics in trademark cases on small-versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rule.

This proposed rule would apply to any entity filing trademark documents with the USPTO. The USPTO estimates, based on the assumptions found in the FY 2021 Congressional Justification, that during the first full fiscal year under the fees as proposed, the USPTO would expect to collect approximately \$77 million more in trademark processing and TTAB fees in FY 2021. The USPTO would receive an additional \$40 million in fees from applications for the registration of a mark, including

requests for extension of protection and subsequent designations; \$3 million more from petitions, letters of protest, and requests for reconsideration; and \$28 million more for section 8 and section 71 affidavits. TTAB fees would increase by \$6 million.

Trademark fees are collected for trademark-related services and products at different points in time in the trademark application examination process and over the lifecycle of the registration. Approximately 55% of all trademark fee collections are from application filing fees. Fees for TTAB proceedings and appeals comprise 2.5% of revenues. Fees from other trademark activities, petitions, assignments and certifications, and Madrid processing are approximately 5% of revenues. Fees for filing post-registration and intent-to-use filings, which subsidize the costs of filing, search, examination, and TTAB activities, comprise 37.5%.

The USPTO's five-year estimated aggregate trademark fee revenue is based on the number of trademark applications and other fee-related filings it expects to receive for a given fiscal year and work it expects to process in a given fiscal year (an indicator of future fee workload and budgetary requirements). Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on policy and cost considerations and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee, which is then used to calculate the aggregate revenue. Additional details about the USPTO's aggregate revenue, including projected workloads by fee, are available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

4. Description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will

be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

The proposed rule imposes no new reporting or recordkeeping requirements. The main purpose of the proposed rule is to set and adjust trademark fees. However, the rule proposes new procedural regulations at 37 CFR 2.149 for the submission of letters of protest. The USPTO does not collect or maintain statistics in trademark cases on small versus large entity applicants and is unable to provide an estimate of the classes of small entities that will be subject to the new procedural requirements.

5. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities:

The USPTO considered four alternatives, based on the assumptions found in the FY 2021 Congressional Justification, before recommending this proposal: (1) the adjustments included in this proposal, (2) an across-the-board adjustment of 22%, (3) the unit cost of providing services based on FY 2019 costs, and (4) no change to the baseline of current fees. The alternatives are each explained here with additional information regarding how each proposal was developed and the aggregate revenue estimated. A description of the Aggregate Revenue Methodologies is available at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

The USPTO proposes to set or adjust trademark fees codified in 37 CFR parts 2 and 7. Fees are adjusted for all application filing types (i.e., paper applications, applications filed via TEAS, and requests for extension of protection under section 66(a) of the Trademark Act (15 U.S.C. 1141f)). The USPTO also proposes to set or adjust

certain other trademark processing fees to further effective administration of the trademark system. For example, the proposed rule increases the fees for certain petitions to the Director as well as section 8 and section 71 affidavits, sets a new fee and proposes procedural regulations for filing a letter of protest, and sets new fees for filing a request for reconsideration more than three months after a final Office action and for deleting goods, services, and/or classes from a registration after submission and prior to acceptance of a section 8 or section 71 affidavit.

The USPTO chose the alternative proposed in this rule because it will enable the Office to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative proposed here secures the USPTO's objectives for meeting the strategic goals of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners and more efficient resolution of appeals and inter partes proceedings at the TTAB by increasing revenue to meet the Office's aggregate future costs. In particular, the new fee structure for requests for reconsideration and requests to delete goods, services, and/or classes from a registration would protect the integrity of the register and the efficiency of the process by incentivizing both more timely filings and proactive action by applicants and registrants. The increased efficiencies realized through the proposed rule will benefit all applicants and registrants by allowing registrations to be granted sooner and more efficiently by removing unused marks and unsupported goods and services from the register. All trademark applicants should benefit from the efficiency that will be realized under the proposed alternative.

With regard to the new regulations governing the filing of letters of protest, the USPTO anticipates that the impact to affected entities would be small. The proposed fee of \$50 is set at a level high enough to recognize there are processing costs and deter the filing of unsupported or irrelevant filings, but low enough so as not to discourage the filing of relevant, well-supported letters of protest. In addition, the new procedural regulations for filing letters of protest are not anticipated to significantly impact affected entities because the proposed new regulations are based on existing informal procedures set out in the TMEP.

Finally, the proposed new provision at § 2.114(a) provides that a partial refund of the fee for a petition to cancel may be made in cases of default judgement where there was no appearance by a defendant and no filings were made other than the petition to cancel. This change would likely balance the cost recovery obtained from the increase in the fee for a petition to cancel, a case type that has increased markedly in recent years, against the benefit of having petitions to cancel filed to remove registrations from the register when petitioners have determined through their investigations that the registered marks are no longer in use. In such situations, default judgments often result, efficiently clearing the register of marks that would otherwise stand as potential bars to applications seeking to register similar marks. This reduces costs for applicants filing such applications.

The proposed fee schedule for this alternative (labeled “Alternative 1—Proposed Alternative”) is available in the document entitled “Initial Regulatory Flexibility Act Tables” at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Another alternative to setting and adjusting the proposed fees that was considered was to increase all fees by the same 22% across the board. This alternative would maintain the status quo structure of cost recovery, where processing and examination costs are subsidized by fees paid for intent-to-use and post-registration maintenance filings (both of which exceed the cost of performing these services), given that all fees would be adjusted by the same escalation factor. This structure would promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants pay maintenance fees above cost to subsidize the below-cost front-end fees. This alternative was ultimately rejected. Although this alternative generates sufficient aggregate revenue to recover aggregate operating costs, unlike the proposed fee structure, there would be no improvements in fee schedule design. As such, this alternative would not accomplish the stated objective of enhancing the integrity of the register by incentivizing users to maintain accurate goods and services. Further, it would not enhance the efficiency of the process, as it would offer no new incentives for users to timely file applications and other filings or to resolve appeals and inter partes proceedings at the TTAB more expeditiously. The proposed fee schedule for this alternative (labeled “Alternative 2—Across-the-Board Adjustment”) is available in the document entitled “Initial Regulatory Flexibility Act Tables” at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

A third alternative that was considered was to set all trademark fees to allow for the USPTO to recover 100% of the unit costs associated with each product or service provided, based on the historical unit costs of the products and services provided by the USPTO. The USPTO uses activity based information to determine the unit costs of

activities that contribute to the services and processes provided by individual fees. It is common practice in the federal government to set a particular fee at a level that recovers the cost of a given good or service. In Office of Management and Budget (OMB) Circular A-25, User Charges, the OMB states that user charges (fees) should be sufficient to recover the full cost to the federal government of providing the particular service, resource, or good, when the government is acting in its capacity as sovereign. Under the unit cost recovery alternative, fees are generally set in line with the FY 2019 cost of providing the product or service. This alternative would produce a structure in which application and processing fees would increase significantly for all applicants and intent-to-use and post-registration maintenance filing fees would decrease dramatically when compared with current fees. In addition, these fees would change from year to year with the ebb and flow in the number of applications submitted. This alternative was rejected because it was determined that the unit costs for any given product or service can vary from year to year, such that a yearly review of all, and an adjustment to many, trademark fees would be continually required and could also lead to consumer confusion regarding the amount at which any given trademark fee was currently set and what the relevant fee would be in the future. Additionally, this alternative does not address improvements in fee design to accomplish the stated objectives of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners as well as practices that improve the efficiency of the process. The USPTO recognizes that this approach does not account for changes in the fee structure or inflationary factors that could likely increase the costs of certain trademark services and necessitate higher fees in the out-years. However, the USPTO contends that the FY 2019 data is the best unit cost data

available to inform this analysis. The proposed fee schedule for this alternative (labeled “Alternative 3—Unit Cost Recovery”) is available in the document entitled “Initial Regulatory Flexibility Act Tables” at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

A final alternative to setting and adjusting the proposed fees would be to take no action at this time regarding trademark fees and to leave all trademark fees as currently set. This alternative was rejected because, due to changes in demand for certain services and rising costs, the Office has determined that a fee increase is needed to meet future budgetary requirements as described in the FY 2021 Budget. As previously explained, the proposed fee schedule will assist in promoting access to the trademark system, protecting the integrity of the register, and promoting the efficiency of the trademark registration process by incentivizing: (1) maintenance of registrations for goods and services for which marks are actually in use, (2) more timely filing of applications and other documents, and (3) faster resolution of appeals and inter partes proceedings at the TTAB. The fee schedule for this alternative (labeled “Alternative 4—Baseline—Current Fee Schedule”) is available in the document entitled “Initial Regulatory Flexibility Act Tables” at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule:

The proposed rule would not duplicate, overlap, or conflict with any other federal rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rule has been determined to be Significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This proposed rule is not expected to be subject to the requirements of Executive Order 13771 (Jan. 30, 2017) because this proposed rule is expected to involve a transfer payment.

F. Executive Order 13132 (Federalism): This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of

Representatives, and the comptroller general of the Government Accountability Office.

The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 et seq.

N. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 et seq.

O. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act: This rule involves information collection requirements that are subject to review and approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collections of information involved with this proposed rule have been reviewed and previously approved by OMB under OMB control numbers 0651-0009, 0651-0027, 0651-0028, 0651-0040, 0651-0050, 0651-0051, 0651-0054, 0651-0055, 0651-0056, and 0651-0061. This action proposes to set or increase certain trademark fees, which would increase the annual non-hour cost burdens \$42,483,850, as set out in the following table:

OMB Control Number	Information Collection Title	Estimated Increase in Cost Burdens (Fees) due to Proposed Rule
0651-0009	Applications for Trademark Registration	\$23,410,200
0651-0040	Trademark Trial and Appeal Board (TTAB) Actions	\$4,833,700
0651-0050	Response to Office Action and Voluntary Amendment Forms	\$7,006,500
0651-0051	Madrid Protocol	\$325,100
0651-0054	Substantive Submissions Made During Prosecution of the Trademark Application	\$3,045,650
0651-0055	Post Registration (Trademark Processing)	\$3,862,700

This estimated cost burden increase is based on the currently OMB approved response volumes associated with these information collections, which may be slightly different than the workflow forecasts cited in other parts of this proposed rule. In addition, any updates to the aforementioned information collections as a result of this proposed rulemaking will be submitted to OMB for approval prior to the effective date of the final rule.

Comments regarding the collection of information associated with this proposed rule, including suggestions for reducing the burden, may be sent to the Commissioner for

Trademarks, by mail to P.O. Box 1451, Alexandria, VA 22313-1451, attention Catherine Cain; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia 22314, attention Catherine Cain; or by electronic mail message via the Federal eRulemaking Portal (<https://www.regulations.gov>). All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2019-0027).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in section 10(a) of the AIA, 15 U.S.C. 1113, 1123, and 35 U.S.C. 2, as amended, the USPTO proposes to amend parts 2 and 7 of title 37 as follows:

PART 2 - RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 1123; 35 U.S.C. 2; sec. 10, Pub. L. 112–29, 125 Stat. 284, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

2. Amend § 2.6 by:

- a. Revising paragraphs (a)(1)(i) through (v);
- b. Adding paragraph (a)(11)(iii);
- c. Revising paragraphs (a)(12), (15) through (18), (22), and (23); and
- d. Adding paragraphs (a)(24) through (26).

The revisions and additions read as follows:

§ 2.6 Trademark fees.

(a) * * *

(1) * * *

(i) For filing an application on paper, per class—\$750.00

(ii) For filing an application under section 66(a) of the Act, per class—\$500.00

(iii) For filing a TEAS Standard application, per class—\$350.00

(iv) For filing a TEAS Plus application under § 2.22, per class—\$250.00

(v) Additional processing fee under § 2.22(c), per class—\$100.00

* * * * *

(11) * * *.

(iii) For filing an amendment to a registration prior to submission of an affidavit under section 8 or section 71 of the Act and consisting only of the deletion of goods, services, and/or classes—\$0.00

(12) *Affidavit under section 8.* (i) For filing an affidavit under section 8 of the Act on paper, per class—\$325.00

(ii) For filing an affidavit under section 8 of the Act through TEAS, per class—\$225.00

(iii) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 8 of the Act on paper, per class—\$350.00

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 8 of the Act through TEAS, per class—\$250.00

* * * * *

(15) *Petitions to the Director.* (i) For filing a petition under § 2.146 or § 2.147 on paper—\$350.00

(ii) For filing a petition under § 2.146 or § 2.147 through TEAS—\$250.00

(iii) For filing a petition under § 2.66 on paper—\$250.00

(iv) For filing a petition under § 2.66 through TEAS—\$150.00

(16) *Petition to cancel.* (i) For filing a petition to cancel on paper, per class—\$700.00

(ii) For filing a petition to cancel through ESTTA, per class—\$600.00

(17) *Notice of opposition.* (i) For filing a notice of opposition on paper, per class—\$700.00

(ii) For filing a notice of opposition through ESTTA, per class—\$600.00

(18) *Ex parte appeal.* (i) For filing an ex parte appeal to the Trademark Trial and Appeal Board on paper, per class—\$325.00

(ii) For filing an ex parte appeal to the Trademark Trial and Appeal Board through ESTTA, per class—\$225.00

(iii) For filing a first request for an extension of time to file an appeal brief, per application—\$0.00

(iv) For filing a second or subsequent request for an extension of time to file an appeal brief on paper, per application—\$200.00

(v) For filing a second or subsequent request for an extension of time to file an appeal brief through ESTTA, per application—\$100.00

(vi) For filing an appeal brief on paper, per class—\$300.00

(vii) For filing an appeal brief through ESTTA, per class—\$200.00

* * * * *

(22) *Extension of time for filing a notice of opposition under § 2.102(c)(1)(ii) or (c)(2).* (i) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) on paper—\$400.00

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) through ESTTA—\$200.00

(23) *Extension of time for filing a notice of opposition under § 2.102(c)(3).* (i) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) on paper—\$500.00

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) through ESTTA—\$400.00

(24) *Oral hearing.* For filing a request for an oral hearing before the Trademark Trial and Appeal Board, per proceeding—\$500.00

(25) *Letter of protest*. For filing a letter of protest, per subject application—
\$50.00

(26) *Request for reconsideration*. (i) For filing a request for reconsideration
within three months after the issue date of a final Office action through TEAS—\$0.00

(ii) For filing a request for reconsideration more than three months after and
within six months of the issue date of a final Office action, or with a petition under
§ 2.66, on paper—\$500.00

(iii) For filing a request for reconsideration more than three months after and
within six months of the issue date of a final Office action, or with a petition under
§ 2.66, through TEAS or ESTTA—\$400.00

* * * * *

3. Amend § 2.114 by revising paragraph (a) to read as follows:

§ 2.114 Answer.

(a)(1) If no answer is filed within the time initially set, or as later may be reset by
the Board, the petition may be decided as in the case of default. The failure to file a timely
answer tolls all deadlines, including the discovery conference, until the issue of default is
resolved.

(2) If the cancellation proceeding is based solely on abandonment or nonuse and
default judgment is entered with no appearance by the defendant, and no filings are made
other than the petition to cancel, \$200 of the petition to cancel fee may be refunded.

* * * * *

4. Add § 2.149 before the center heading “Certificate” to read as follows:

§ 2.149 Letters of protest against pending applications.

(a) A third party may submit, for consideration and entry in the record of a trademark application, objective evidence relevant to the examination of the application for a ground for refusal of registration if the submission is made in accordance with this section.

(b) A party protesting multiple applications must file a separate submission under this section for each application.

(c) Any submission under this section must be filed no later than 30 days after the date the application is published for opposition under section 12(a) of the Act and § 2.80 of this part. If the subject application cannot be withdrawn from issuance of a registration while consideration of the protest is pending, the protest may be considered untimely.

(d)(1) If the letter of protest is filed before publication of the subject application, the evidence must be relevant to the identified ground(s) for refusal, such that it is appropriate for the examining attorney to consider whether to issue a refusal or make a requirement under the Act or this part.

(2) If the letter of protest is filed on or within 30 days after the date of publication of the subject application, the evidence must establish a prima facie case for refusal on the identified ground(s), such that failure to issue a refusal or to make a requirement would likely result in issuance of a registration in violation of the Act or this part.

(e) Filing a submission under this section does not stay or extend the time for filing a notice of opposition.

(f) Any submission under this section must be made in writing, filed through TEAS, and include:

(1) The fee required by § 2.6(a)(25);

(2) The serial number of the pending application that is the subject of the protest;

(3) An itemized evidence index that does not identify the protestor or its representatives, does not contain legal argument, and includes:

(i) An identification of the documents, or portions of documents, being submitted as evidence. The submission may not total more than 10 items of evidence in support of a specified ground of refusal and more than 75 total pages of evidence without a detailed and sufficient explanation that establishes the special circumstances that necessitate providing more than 10 items of evidence per refusal ground or more than 75 total pages of evidence; and

(ii) A concise factual statement of the relevant ground(s) for refusal of registration appropriate in ex parte examination that each item identified supports; and

(4) A clear and legible copy of each item identified in the evidence index where:

(i) Copies of third-party registrations come from the electronic records of the Office and show the current status and title of the registration;

(ii) Evidence from the internet includes the date the evidence was published or accessed and the complete URL address of the website; and

(iii) Copies of printed publications identify the publication name and date of publication.

(g) Any submission under this section may not be entered or considered by the Office if:

(1) Any part of the submission is not in compliance with this section;

(2) The application record shows that the examining attorney already considered the refusal ground(s) specified in the submission; or

(3) A provision of the Act or parts 2 or 7 of this chapter precludes acceptance of the submission.

(h) If a submission is determined to be in compliance with this section, only the specified ground(s) for refusal and the provided evidence relevant to the ground(s) for refusal will be included in the application record for consideration by the examining attorney. An applicant need not and should not reply to the entry into the application record of such evidence in the absence of an Office action issuing that includes such evidence.

(i) Any determination whether to include in an application record the ground(s) or evidence for a refusal of registration in a submission under this section is not petitionable.

(j) A third party filing a submission under this section will not receive any communication from the Office relating to the submission other than acknowledgement that it has been received by the Office and notification of whether the submission is found to be compliant or non-compliant with this section. Communications with the third party will not be made of record in the application. The Office will not accept amendments to a non-compliant submission that was previously filed. Instead, a third party who previously filed a non-compliant submission may file another submission that meets the requirements of paragraph (f) of this section, provided the time period for filing a submission in paragraph (c) of this section has not closed.

(k) The limited involvement of the third party ends with the filing of the submission under this section. The third party may not directly contact the examining attorney assigned to the application.

5. Revise § 2.161 to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse; requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens; and fee for deletions of goods, services, and/or classes from a registration.

(a) *Requirements for a complete affidavit or declaration.* A complete affidavit or declaration under section 8 of the Act must:

(1) Be filed by the owner within the period set forth in § 2.160(a);

(2) Include a verified statement attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 8 of the Act. This verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a);

(3) Include the U.S. registration number;

(4)(i) Include the fee required by § 2.6 for each class that the affidavit or declaration covers;

(ii) If the affidavit or declaration is filed during the grace period under section 8(a)(3) of the Act, include the grace period surcharge per class required by § 2.6;

(iii) If at least one fee is submitted for a multiple-class registration, but the fee is insufficient to cover all the classes, and the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either submission of the additional fee(s) or specification of the class(es) to which the initial fee(s) should be applied. Additional fees may be submitted if the requirements of § 2.164 are met. If the additional fee(s) are not submitted within the time period set out in the Office action and the class(es) to which the original fee(s) should be applied are not specified, the Office

will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(5)(i) Specify the goods, services, or nature of the collective membership organization for which the mark is in use in commerce, and/or the goods, services, or nature of the collective membership organization for which excusable nonuse is claimed under paragraph (a)(6)(ii) of this section; and

(ii) Specify the goods, services, or classes being deleted from the registration, if the affidavit or declaration covers fewer than all the goods, services, or classes in the registration;

(6)(i) State that the registered mark is in use in commerce; or

(ii) If the registered mark is not in use in commerce on or in connection with all the goods, services, or classes specified in the registration, set forth the date when such use of the mark in commerce stopped and the approximate date when such use is expected to resume; and recite facts to show that nonuse as to those goods, services, or classes is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(7) Include one specimen showing how the mark is in use in commerce for each class in the registration, unless excusable nonuse is claimed under paragraph (a)(6)(ii) of this section. When requested by the Office, additional specimens must be provided. The specimen must meet the requirements of § 2.56.

(8) Additional requirements for a collective mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a collective mark must:

(i) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(ii) If the registration issued from an application based solely on section 44 of the Act, state the nature of the owner's control over the use of the mark by the members in the first affidavit or declaration filed under paragraph (a)(1) of this section.

(9) Additional requirements for a certification mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a certification mark must:

(i) Include a copy of the certification standards specified in §2.45(a)(4)(i)(B);

(A) *Submitting certification standards for the first time.* If the registration issued from an application based solely on section 44 of the Act, include a copy of the certification standards in the first affidavit or declaration filed under paragraph (a)(1) of this section; or

(B) *Certification standards submitted in prior filing.* If the certification standards in use at the time of filing the affidavit or declaration have not changed since the date they were previously submitted to the Office, include a statement to that effect; if the certification standards in use at the time of filing the affidavit or declaration have changed since the date they were previously submitted to the Office, include a copy of the revised certification standards;

(ii) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(iii) Satisfy the requirements of § 2.45(a)(4)(i)(A) and (C).

(10) For requirements of a complete affidavit or declaration of use in commerce or excusable nonuse for a registration that issued from a section 66(a) basis application, see § 7.37.

(b) *Requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens.* The Office may require the owner to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 8 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

(c) *Fee for deletions of goods, services, and/or classes from a registration.* Deletions by the owner of goods, services, and/or classes from a registration after submission and prior to acceptance of the affidavit or declaration must be accompanied by the relevant fee in § 2.6(a)(12)(iii) or (iv).

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

6. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

7. Amend § 7.6 by revising paragraph (a)(6) read as follows:

§ 7.6 Schedule of U.S. process fees.

(a) * * *

(6) *Affidavit under section 71.* (i) For filing an affidavit under section 71 of the Act on paper, per class—\$325.00

(ii) For filing an affidavit under section 71 of the Act through TEAS, per class—
\$225.00

(iii) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 71 of the Act on paper, per class—\$350.00

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 71 of the Act through TEAS, per class —\$250.00

* * * * *

8. Revise § 7.37 to read as follows:

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse; requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens; and fee for deletions of goods, services, and/or classes from a registration.

(a) *Requirements for a complete affidavit or declaration.* A complete affidavit or declaration under section 71 of the Act must:

(1) Be filed by the holder of the international registration within the period set forth in § 7.36(b);

(2) Include a verified statement attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 71 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 7.36(b). A person who is properly authorized to sign on behalf of the holder is:

(i) A person with legal authority to bind the holder;

(ii) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the holder; or

(iii) An attorney as defined in § 11.1 of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the holder.

(3) Include the U.S. registration number;

(4)(i) Include the fee required by § 7.6 for each class that the affidavit or declaration covers;

(ii) If the affidavit or declaration is filed during the grace period under section 71(a)(3) of the Act, include the grace period surcharge per class required by § 7.6;

(iii) If at least one fee is submitted for a multiple-class registration, but the fee is insufficient to cover all the classes, and the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either submission of the additional fee(s) or specification of the class(es) to which the initial fee(s) should be applied. Additional fees may be submitted if the requirements of § 7.39 are met. If the additional fee(s) are not submitted within the time period set out in the Office action, and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(5)(i) Specify the goods, services, or nature of the collective membership organization for which the mark is in use in commerce, and/or the goods, services, or nature of the collective membership organization for which excusable nonuse is claimed under paragraph (a)(6)(ii) of this section; and

(ii) Specify the goods, services, or classes being deleted from the registration, if the affidavit or declaration covers fewer than all the goods, services, or classes in the registration;

(6)(i) State that the registered mark is in use in commerce; or

(ii) If the registered mark is not in use in commerce on or in connection with all the goods, services, or classes specified in the registration, set forth the date when such use of the mark in commerce stopped and the approximate date when such use is expected to resume; and recite facts to show that nonuse as to those goods, services, or classes is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(7) Include one specimen showing how the mark is in use in commerce for each class in the registration, unless excusable nonuse is claimed under paragraph (a)(6)(ii) of this section. When requested by the Office, additional specimens must be provided. The specimen must meet the requirements of § 2.56 of this chapter.

(8) Additional requirements for a collective mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a collective mark must:

(i) State that the holder is exercising legitimate control over the use of the mark in commerce; and

(ii) State the nature of the holder's control over the use of the mark by the members in the first affidavit or declaration filed under paragraph (a)(1) of this section.

(9) Additional requirements for a certification mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a certification mark must:

(i) Include a copy of the certification standards specified in § 2.45(a)(4)(i)(B) of this chapter;

(A) *Submitting certification standards for the first time.* In the first affidavit or declaration filed under paragraph (a)(1) of this section, include a copy of the certification standards; or

(B) *Certification standards submitted in prior filing.* If the certification standards in use at the time of filing the affidavit or declaration have not changed since the date they were previously submitted to the Office, include a statement to that effect; if the certification standards in use at the time of filing the affidavit or declaration have changed since the date they were previously submitted to the Office, include a copy of the revised certification standards;

(ii) State that the holder is exercising legitimate control over the use of the mark in commerce; and

(iii) Satisfy the requirements of § 2.45(a)(4)(i)(A) and (C) of this chapter.

(b) *Requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens.* The Office may require the holder to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 71 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

(c) *Fee for deletions of goods, services, and/or classes from a registration.* Deletions by the holder of goods, services, and/or classes from a registration after submission and prior to acceptance of the affidavit or declaration must be accompanied by the relevant fee in § 7.6(a)(6)(iii) or (iv).

Dated: June 12, 2020.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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